

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**CIVIL CONFERENCE
MINUTE ORDER**

BEFORE: A. KATHLEEN TOMLINSON
U.S. MAGISTRATE JUDGE

DATE: 3/8/10
TIME: 11:00 AM

Bankcorp Bank v. Lattuca, et al., CV 07-1603 (JFB) (AKT)

TYPE OF CONFERENCE: **TELEPHONE CONFERENCE**

APPEARANCES: Plaintiff: Colin Knisely
Defendant: Scott Kossove
Third-Party
Defendant: Michael Freudenberg

THE FOLLOWING RULINGS WERE MADE:

Today's conference was scheduled to address the issues raised in Defendants'/Third-Party Plaintiffs' March 1, 2010 letter motion [DE 66] to compel Third-Party Defendants responses to outstanding discovery requests. The deadline for Third-Party Defendants to respond to requests for document production and interrogatories was January 28, 2010. *See* DE 65. Prior to that date, Third-Party Defendants did not file any request for an extension of time to respond to outstanding discovery requests. In the five weeks since the expiration of that deadline, Third-Party Defendants have not provided opposing counsel or the Court with an explanation for their failure to respond. In sum, Third-Party Defendants have done nothing to comply with their discovery obligations. Moreover, Third-Party Defendants are in violation of the direct Orders of this Court.

After hearing from the parties today, I am directing that Third-Party Defendants serve their responses to all of Defendants' outstanding discovery requests by the close of business on **March 16, 2010**. This includes responses to Defendants' document requests and interrogatories as well as all responsive documents themselves. As discussed during today's Conference, by that time, the discovery responses must be in the possession of Defendant's counsel. In light of Third-Party Defendants' failure to respond to the discovery requests in a timely manner, all objections are deemed waived. *See Ehrlich v. Village of Sea Cliff*, CV 04-4025, 2007 WL 1593241, at *4 (E.D.N.Y. Jun. 1, 2007).

If Third-Party Defendants fail to provide their complete discovery responses by March 16, 2010, I have placed their counsel on notice that I will begin the process of imposing monetary sanctions on a *per diem* basis for each day that the responses are not served. Under the Federal Rules of Civil Procedure, Third-Party Defendants are required to assist their counsel in complying with their discovery obligations in this case. If Third-Party Defendants do not assist their counsel in producing their discovery responses and continue their failure to comply with the Orders of this Court, then sanctions will be imposed directly on Third-Party Defendants themselves rather than upon their counsel.

An Amended Case Management and Scheduling Order will be entered separately. The parties are on notice that this is the final Scheduling Order for the completion of the pre-trial phase of this case and, absent extraordinary circumstances, no further extensions will be permitted.

SO ORDERED

/s/ A. Kathleen Tomlinson
A. KATHLEEN TOMLINSON
U.S. Magistrate Judge